1

1   IN THE UNITED STATES DISTRICT COURT
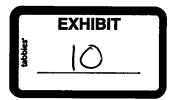
2   FOR THE EASTERN DISTRICT OF VIRGINIA

3   Richmond Division

4   ------------------------x

5   ePLUS INC.,   )

6   Plaintiff,   )   Civil Action No.

7   v.   )   3:09-CV-620 (REP)

8   LAWSON SOFTWARE, INC.,   )

9   Defendant.   )

10   ------------------------x

11

12   CONFIDENTIAL - SOURCE CODE

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14   Videotaped Deposition of ALFRED C. WEAVER, Ph.D.

15   Washington, DC.

16   Thursday, February 9, 2012

17   9:01 a.m.

18

19

20   Job No.: 17905

21   Pages: 1 - 274

22   Reported by: Lee Bursten, RPR, CRR

EXHIBIT
10

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CONDUCTED ON THURSDAY, FEBRUARY 9, 2012

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1	factually a difference.	12:13:42
2	A Factually, it's for an error-free -- for a	12:13:43
3	single error-free item, RSS stores the data in two	12:13:46
4	data structures. RQC stores it in three. But again,	12:13:50
5	it makes no difference.	12:13:55
6	Q Did you discuss in your testimony at the	12:13:56
7	first trial how errors were processed in RSS?	12:14:01
8	A No.	12:14:06
9	Q Did you make any distinction for purposes	12:14:12
10	of your opinions at the first trial that the	12:14:16
11	infringing configurations infringed claim 1 of the	12:14:24
12	'172 patent between the way search items without	12:14:26
13	error and search items with error were processed?	12:14:35
14	A I think our demonstrations were error-free.	12:14:39
15	Q So there was no contention that the manner	12:14:54
16	in which RSS functioned in the context of an error	12:14:56
17	was contended to be infringement?	12:15:05
18	MS. ALBERT: I object to the form.	12:15:09
19	Ambiguous.	12:15:12
20	A I did not have an example of -- I did not	12:15:14
21	do a demonstration of selecting and adding an item	12:15:17
22	with an error.	12:15:23

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1	BY MR. THOMASCH:	12:15:23
2	Q You went through a number of demonstrations	12:15:23
3	that were intended to show the jury how using the	12:15:26
4	system would read on the claims, claim 1 of the '172	12:15:29
5	patent and would be infringing, correct?	12:15:35
6	A Correct.	12:15:37
7	Q And in those demonstrations, the selected	12:15:37
8	items were error-free, correct?	12:15:41
9	A They were.	12:15:42
10	Q And in that error-free context, you said	12:15:43
11	the jury could find everything it needed to find in	12:15:48
12	order to find infringement of claim 1 of the '172	12:15:51
13	patent, correct?	12:15:54
14	A Yes.	12:15:54
15	Q And in doing so, you didn't reference the	12:15:54
16	cookie server file, correct?	12:15:59
17	A You're talking about the Shopping Cart	12:16:01
18	Cookie file? The one that's on the server side?	12:16:06
19	Q Yes.	12:16:14
20	A Yes.	12:16:14
21	Q Did you reference that by name?	12:16:15
22	A Not by name.	12:16:17

CONFIDENTIAL VIDEOTAPED DEPOSITION OF ALFRED C. WEAVER, PH.D.
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1	Q What you knew was that by your knowledge as	12:16:24
2	a computer scientist, you knew that if there was	12:16:28
3	something in the My Cart user interface, there needed	12:16:31
4	to be a data structure behind it, correct?	12:16:36
5	A I did know that.	12:16:38
6	Q But you didn't know how many such	12:16:39
7	structures or precisely what they were called,	12:16:42
8	correct?	12:16:44
9	A Not precisely. I called it a cache, which	12:16:44
10	is what it is.	12:16:47
11	Q Would that same description apply to the	12:16:49
12	other data structures?	12:16:52
13	A Which description?	12:16:57
14	Q Cache. Could cache be used for any one of	12:16:58
15	the data structures you've identified?	12:17:04
16	A No.	12:17:06
17	Q Which one would not be considered to be a	12:17:06
18	cache in your view?	12:17:09
19	A The database.	12:17:10
20	Q Would the two data structures that exist	12:17:11
21	prior to the Save function both be fairly described	12:17:15
22	as a cache?	12:17:18

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1	Q And is it fair to say that you don't know	14:00:19
2	whether they were rendering that based on their	14:00:24
3	finding that Item Master had been proven to infringe,	14:00:30
4	Punchout had been proven to infringe, or both?	14:00:36
5	A I don't know what they were thinking.	14:00:39
6	Q They found one of those three, correct?	14:00:41
7	A I guess.	14:00:44
8	Q Assuming that they had a basis for their	14:00:45
9	verdict. Wouldn't that be right?	14:00:51
10	A Let's give them some credit, right?	14:00:52
11	Q I'm always prepared to credit a jury. So	14:00:55
12	they could have found Item Master did it consistent	14:00:57
13	with your testimony, correct?	14:00:59
14	A Yes.	14:01:00
15	Q And they could have found that Punchout	14:01:00
16	fulfilled the maintaining at least two product	14:01:03
17	catalogs element of claim 28 in rendering their	14:01:08
18	verdict on configuration number 3, correct?	14:01:12
19	A Correct.	14:01:15
20	Q And they could have found that both did,	14:01:15
21	correct?	14:01:17
22	A Yes.	14:01:18

CONFIDENTIAL VIDEOTAPED DEPOSITION OF ALFRED C. WEAVER, PH.D.
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1	Master or found Punchout to infringe, you only know	14:09:36
2	they found at least one of them; is that correct?	14:09:40
3	A For claim 3?	14:09:42
4	Q For claim 3.	14:09:43
5	A So you switched claims.	14:09:46
6	Q I'm sorry. I'm sorry. That is my fault.	14:09:48
7	The '683 patent, claim 28.	14:09:51
8	A Right. Again --	14:09:55
9	Q In that regard, I think you've established	14:09:57
10	that you don't know what they found to find	14:09:59
11	configuration 3 infringing of the element of claim 28	14:10:04
12	that relates to catalogs, correct?	14:10:09
13	A Correct.	14:10:12
14	Q Now, do you understand that in doing the	14:10:21
15	Tivo analysis, the Federal Circuit requires one to	14:10:25
16	identify the modified features and focus the analysis	14:10:31
17	on the modified features?	14:10:35
18	MS. ALBERT: Asked and answered four times.	14:10:36
19	A Yes.	14:10:40
20	BY MR. THOMASCH:	14:10:44
21	Q And then the first thing that's done is	14:10:44
22	determine whether they were changed, correct?	14:10:48

CONFIDENTIAL VIDEOTAPED DEPOSITION OF ALFRED C. WEAVER, PH.D.
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1	fourth level of the UNSPSC codes; is that right?		16:15:07
2	A No.		16:15:11
3	Q Which one did you not?		16:15:11
4	A There were several demonstrations that had		16:15:13
5	nothing to do with UNSPSC codes.		16:15:17
6	Q Okay. Then let me rephrase my question.		16:15:19
7	A Sure.		16:15:23
8	Q You conducted multiple demonstrations for		16:15:24
9	the purpose of showing the jury why you thought that		16:15:27
10	the infringing configurations were infringing, and		16:15:37
11	with respect to the UNSPSC codes, in every one of		16:15:44
12	those where the focus was on that capacity, you		16:15:48
13	drilled down to the fourth level, correct?		16:15:53
14	A I did, because this was RSS.		16:15:55
15	Q RSS, you could choose to drill down only to		16:15:59
16	the third level, correct?		16:16:04
17	A You could.		16:16:05
18	Q Now, you indicated at trial when doing the		16:16:12
19	demonstration that your goal was "to illustrate the		16:16:15
20	category search in which we can find generally		16:16:19
21	equivalent items and then we can find other items and		16:16:21
22	build a requisition and then we can build one or more		16:16:24

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CONFIDENTIAL VIDEOTAPED DEPOSITION OF ALFRED C. WEAVER, PH.D.
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1	So the UNSPSC code would qualify as a	16:25:26
2	non-catalog database identifying cross-referenced	16:25:32
3	items.	16:25:35
4	Q And it actually says, "identifying	16:25:36
5	cross-referenced items, identical items, or generally	16:25:39
6	equivalent items;". Is that right?	16:25:43
7	A Right. And notice those are connected with	16:25:46
8	an "or."	16:25:49
9	Q I do. I just want for the sake of	16:25:50
10	completeness, your point, if I understand it, is that	16:25:52
11	drilling down to the third level in the category	16:25:56
12	search in RQC satisfies this claim element because	16:26:02
13	the product of the search at that level will identify	16:26:11
14	cross-referenced items, correct?	16:26:16
15	A Correct.	16:26:18
16	Q You are not saying that they identify	16:26:20
17	identical items, correct?	16:26:23
18	A I am not saying that.	16:26:25
19	Q And you're not stating that the product	16:26:26
20	will be all generally equivalent items?	16:26:28
21	A I am not stating that.	16:26:29
22	Q But they are cross-referenced, in your	16:26:31

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CONFIDENTIAL VIDEOTAPED DEPOSITION OF ALFRED C. WEAVER, PH.D.
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1	Q If the items are error-free, will you be --	17:00:36
2	can you be building an order list without also being	17:00:42
3	building a requisition?	17:00:50
4	A If they are error-free. No, they're built	17:00:52
5	simultaneously.	17:00:56
6	Q Can you explain how you build a requisition	17:01:04
7	before the order list is complete in RQC?	17:01:11
8	A I said you couldn't. I said you can build	17:01:14
9	them simultaneously. And when you hit "Release" in	17:01:22
10	RQC, that says that the -- that's what changes the	17:01:31
11	status of the Requisition Database, Requisition Line	17:01:43
12	items from unreleased to released.	17:01:46
13	Q Is there a requisition in RQC before you	17:01:48
14	hit "Release"?	17:01:58
15	A Only a requisition in progress. No.	17:01:59
16	There's not a requisition.	17:02:01
17	Q And who coined the term "requisition in	17:02:02
18	progress"?	17:02:07
19	A I thought it was you, but you gave me	17:02:07
20	credit.	17:02:11
21	Q I did give you credit, because it comes	17:02:11
22	from your report. What I was wondering is whether it	17:02:13

CONFIDENTIAL VIDEOTAPED DEPOSITION OF ALFRED C. WEAVER, PH.D.
CONDUCTED ON THURSDAY, FEBRUARY 9, 2012

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1	MS. ALBERT: Thank you. Nothing further.	17:24:34
2	FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT	17:24:36
3	BY MR. THOMASCH:	17:24:36
4	Q And does your report discuss the webinar as	17:24:37
5	it relates to any assertion of direct infringement?	17:24:41
6	A Without rereading the whole thing, I can't	17:24:43
7	be sure. But I don't recall writing that.	17:24:45
8	MR. THOMASCH: Thank you.	17:24:49
9	MS. ALBERT: Nothing further.	17:24:53
10	THE VIDEOGRAPHER: Going off the record at	17:24:54
11	5:24 p.m.	17:24:55
12	(Signature having not been waived, the	
13	videotaped deposition of ALFRED C. WEAVER, Ph.D. was	
14	concluded at 5:24 p.m.)	
15		
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CONFIDENTIAL VIDEOTAPED DEPOSITION OF ALFRED C. WEAVER, PH.D.
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1   ACKNOWLEDGMENT OF DEPONENT

2   I, ALFRED C. WEAVER, Ph.D., do hereby

3   acknowledge that I have read and examined the

4   foregoing testimony, and the same is a true, correct

5   and complete transcription of the testimony given by

6   me and any corrections appear on the attached Errata

7   sheet signed by me.

8

9

10   _____   _____

11   (DATE)   (SIGNATURE)

12

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1   CERTIFICATE OF SHORTHAND REPORTER—NOTARY PUBLIC

2   I, Lee Bursten, the officer before whom the

3   foregoing deposition was taken, do hereby certify

4   that the foregoing transcript is a true and correct

5   record of the testimony given; that said testimony

6   was taken by me stenographically and thereafter

7   reduced to typewriting under my direction; and that I

8   am neither counsel for, related to, nor employed by

9   any of the parties to this case and have no interest,

10   financial or otherwise, in its outcome.

11   IN WITNESS WHEREOF, I have hereunto set my

12   hand and affixed my notarial seal this 13th day of

13   February, 2012.

14

15   My commission expires June 30, 2014.

16

17

18

19

20   _____

21   NOTARY PUBLIC IN AND FOR

22   THE DISTRICT OF COLUMBIA